

Assembly Bill No. 2899

CHAPTER 622

An act to amend Section 1197.1 of the Labor Code, relating to employment.

[Approved by Governor September 25, 2016. Filed with
Secretary of State September 25, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2899, Roger Hernández. Minimum wage violations: challenges.

Under existing law, any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by applicable state or local law or an order of the Industrial Welfare Commission, is subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable specified penalties, as provided. Existing law provides notice and hearing requirements under which a person against whom a citation has been issued can request a hearing to contest proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties. Existing law further provides that after a hearing with the Labor Commissioner, a person contesting a citation may file a writ of mandate, within 45 days, with the appropriate superior court.

This bill would require a person seeking a writ of mandate contesting the Labor Commissioner's ruling to post a bond with the Labor Commissioner, as specified, in an amount equal to the unpaid wages assessed under the citation, excluding penalties. The bill would require that the bond be issued in favor of the unpaid employees and ensure that the person seeking the writ makes prescribed payments pursuant to the proceedings. The bill would provide that the proceeds of the bond, sufficient to cover the amount owed, would be forfeited to the employee if the employer fails to pay the amounts owed within 10 days from the conclusion of the proceedings, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1197.1 of the Labor Code is amended to read:

1197.1. (a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

(b) If, upon inspection or investigation, the Labor Commissioner determines that a person has paid or caused to be paid a wage less than the minimum under applicable law, the Labor Commissioner may issue a citation to the person in violation. The citation may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated. The Labor Commissioner shall promptly take all appropriate action, in accordance with this section, to enforce the citation and to recover the civil penalty assessed, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 in connection with the citation.

(c) (1) If a person desires to contest a citation or the proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 therefor, the person shall, within 15 business days after service of the citation, notify the office of the Labor Commissioner that appears on the citation of his or her appeal by a request for an informal hearing. The Labor Commissioner or his or her deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 shall be affirmed, modified, or dismissed.

(2) The decision of the Labor Commissioner shall consist of a notice of findings, findings, and an order, all of which shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil Procedure. Any amount found due by the Labor Commissioner as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from this finding to the appropriate

superior court. The party shall pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ shall be taken within 45 days of service of the notice of findings, findings, and order thereon.

(3) As a condition to filing a petition for a writ of mandate, the petitioner seeking the writ shall first post a bond with the Labor Commissioner equal to the total amount of any minimum wages, liquidated damages, and overtime compensation that are due and owing as determined pursuant to subdivision (b) of Section 558, as specified in the citation being challenged. The bond amount shall not include amounts for penalties. The bond shall be issued by a surety duly authorized to do business in this state, shall be issued in favor of unpaid employees, and shall ensure that the petitioner makes payments as set forth in this paragraph. If a decision is entered which affirms or modifies the amounts for minimum wages, liquidated damages, or overtime compensation, the petitioner shall pay the amounts owed for the specified items included in a clerk's judgment entered under subdivision (f) based on the decision, or pursuant to a court judgment in a writ of mandate proceeding under paragraph (2). If the request for a writ is withdrawn or dismissed without entry of judgment, the petitioner shall pay the amounts owed for the specified items pursuant to the citation, or the administrative decision if a pending writ of mandate is dismissed prior to a court decision, unless the parties have executed a settlement agreement for payment of some other amount. In the case of a settlement agreement, the petitioner shall pay the amount he or she is obligated to pay under the terms of the settlement.

(4) If the employer fails to pay the amount of minimum wages, liquidated damages, or overtime compensation owed within 10 days of the entry of judgment, dismissal or withdrawal of writ, or the execution of a settlement agreement, a portion of the undertaking, described in paragraph (3), equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, shall be forfeited to the employee.

(d) A person to whom a citation has been issued shall, in lieu of contesting a citation pursuant to this section, transmit to the office of the Labor Commissioner designated on the citation the amount specified for the violation within 15 business days after issuance of the citation.

(e) When no petition objecting to a citation or the proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 is filed, a certified copy of the citation or proposed civil penalty, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the citation or proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203.

(f) When findings and the order thereon are made affirming or modifying a citation or proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 after hearing, a certified copy of these findings and the order entered thereon may be entered by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(g) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk shall make no charge for the service provided by this section to be performed by him or her.

(h) In a jurisdiction where a local entity has the legal authority to issue a citation against an employer for a violation of any applicable local minimum wage law, the Labor Commissioner, pursuant to a request from the local entity, may issue a citation against an employer for a violation of any applicable local minimum wage law if the local entity has not cited the employer for the same violation. If the Labor Commissioner issues a citation, the local entity shall not cite the employer for the same violation.

(i) The civil penalties provided for in this section are in addition to any other penalty provided by law.

(j) This section shall not apply to any order of the commission relating to household occupations.

(k) This section does not change the applicability of local minimum wage laws to any entity.